

Before the
Federal Communications Commission
Washington, D.C. 20554

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|-----------------------------|---|----------------------------|
| In the Matter of |) | File No.: EB-01-MA-035 |
| |) | |
| Lightning Electronics, Inc. |) | NAL/Acct. No. 200232700009 |
| |) | |
| Miami, Florida |) | FRN 0006-2915-95 |

MEMORANDUM OPINION AND ORDER

Adopted: October 7, 2003

Released: October 10, 2003

By the Chief, Enforcement Bureau:

1. In this *Memorandum Opinion and Order* ("Order"), we deny the request filed by Lightning Electronics, Inc. ("Lightning"), for reconsideration of the *Forfeiture Order* issued to Lightning on October 2, 2002, for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended ("Act")¹ and Section 2.803(a)(1) of the Commission's Rules ("Rules").² The noted violations involve Lightning's marketing of unapproved long-range cordless telephones.

2. On May 21, 2002, the District Director of the Enforcement Bureau's ("Bureau") Tampa, Florida, Office ("Tampa Office") released a *Notice of Apparent Liability for Forfeiture* ("NAL") against Lightning in the amount of \$7,000.³ Lightning filed its response to the NAL dated June 11, 2002. On October 2, 2002, the Chief, Enforcement Bureau, issued a *Forfeiture Order*⁴ affirming the forfeiture proposed by the NAL. On October 30, 2002, Lightning filed a "Notice of Appeal of Forfeiture Order and Request for Production of Documentation." We construed this filing, pursuant to Section 1.106 of the Rules,⁵ as a petition for reconsideration of the *Forfeiture Order* and, because of the request for documents, held action upon its petition for reconsideration in abeyance to give Lightning the opportunity to obtain information through a Freedom of Information Act ("FOIA") request.

3. Lightning filed a FOIA request dated May 30, 2003.⁶ The Enforcement Bureau granted that FOIA request in part and denied it in part on July 3, 2003.⁷ On August 4, 2003, we informed Lightning by letter that, if it did not file a supplement to the petition for reconsideration by August 19, 2003, we would review the petition for reconsideration on the basis of the record currently before us.

¹ 47 U.S.C. § 302a (b).

² 47 C.F.R. § 2.803(a)(1).

³ *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 200232700009 (Enf. Bur., Tampa Office, released May 21, 2002).

⁴ *Lightning Electronics, Inc.*, 17 FCC Rcd 3131 (Enf. Bur. 2002)

⁵ 47 C.F.R. § 1.106.

⁶ FOIA Control No. 2003-379.

⁷ Letter from Joseph Casey, Chief Technical and Public Safety Division, Enforcement Bureau, to Ira S. Silver, Esquire, (July 3, 2003).

4. On September 12, 2003, Lightning, through its attorney, filed a supplement to its petition for reconsideration. In the supplement, Lightning asserts, in pertinent part, that “due to poor economic circumstances in the retail business, Lightning Electronics, Inc., has ceased doing business. Although I believe that the forfeiture order was improperly entered, this appears to be a moot issue.”

5. Lightning’s petition for reconsideration is essentially a request for documents and does not contain any information or arguments which could form the basis for any change in the action taken in the *Forfeiture Order*. The only argument contained in Lightning’s supplementary filing is that this proceeding is moot because Lightning has ceased doing business. We do not agree. The Commission does not routinely dismiss forfeiture cases when the subject has gone out of business.⁸ In *PC Fixx, Inc.*, the Commission did dismiss a monetary forfeiture proceeding as moot after determining that the subject was “no longer a business entity.”⁹ However, that precedent is not applicable here because a check of the Florida Department of State internet site indicates that Lightning still exists as a legal entity. Therefore, we find that there is no basis for changing our action and that the petition for reconsideration must be denied.

6. **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁰ and Section 1.106 of the Rules, Lightning’s petition for reconsideration **IS DENIED**.

7. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail -- Return Receipt Requested -- to Lightning Electronics, Inc., at 231 E. Flagler Street, Unit #1, Miami, Florida 33131, and to Lightning’s attorney, Ira S. Silver, Esquire, Silver & Silver, 108 S. Miami Avenue, 2nd Floor, Miami, Florida 33130.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ See, eg., *Certified Computers*, 9 FCC Rcd 1850 (Field Operations Bureau 1994) and *Hayward Squadron*, 9 FCC Rcd 1761 (Field Operations Bureau 1994).

⁹ 12 FCC Rcd 16575, 16575 (1997).

¹⁰ 47 U.S.C. § 405.